IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 282.

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,
Petitioners,

against

THE UNITED STATES,
Respondent.

BRIEF OF NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *AMICUS CURIAE.*

ABRAHAM E. FREEDMAN,
36 Seventh Avenue,
New York, N. Y. 10011,
General Counsel, National Maritime Union of America, AFL-CIO.

346 Pandick Press, Inc., 22 Thames St., New York, N. Y. 10006. U. S. A.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 282.

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,

Petitioners,

against

THE UNITED STATES,

Respondent.

BRIEF OF NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *AMICUS CURIAE.*

Interest of *Amicus Curiae.*

The National Maritime Union of America, AFL-CIO submits this Brief as *amicus curiae* seeking reversal of the decisions below. The National Maritime Union is the collective bargaining representative for the unlicensed seamen employed aboard vessels operated by the Military Sea Transportation Service and various other governmental agencies and is directly affected by the outcome of the instant litigation as there is presently pending a similar action on behalf of the unlicensed seamen employed aboard Military Sea Transportation Service vessels. See *Afnese et al. v. United States,* Ct. Cl. 294-64. Both the Solicitor General and Counsel for Petitioners have consented in writing to the filing of this *amicus* brief.

Argument.

The emergence, since World War II, of the United States as a large scale operator of vessels—either directly through such agencies as the Military Sea Transportation Service (MSTS), or indirectly through agency agreements with privately owned companies—has resulted in frequent efforts by the government to invoke the Suits in Admiralty Act, 46 U. S. C. §§ 741-752, and Public Vessels Act, 46 U. S. C. §§ 781-790, as a means of *limiting* the rights of parties having claims against the United States. The National Maritime Union of America, AFL-CIO, as collective bargaining representative for the unlicensed seamen employed aboard MSTS and numerous other government operated vessels, strongly opposes this attempted distortion of these two important federal statutes which were intended to *expand* and not limit the right to redress against the United States.

Both the Suits in Admiralty Act and the Public Vessels Act were enacted following World War I in response to a wide spread demand that the government put aside its armor of sovereign immunity with respect to claims arising out of its mushrooming maritime operations. As this Court noted in *Johansen* vs. *United States*, 343 U. S. 427 (1952), both statutes were intended to provide remedies against the United States in those cases where none had existed before. It has never been suggested that either statute was intended to limit or replace remedies already available against the United States. Yet this is precisely the position now advanced by the government and the direct effect of the decisions presently under review.

The instant suits involve claims based upon federal wage statutes of general application to federal employees.

Such actions are properly within the jurisdiction of the Court of Claims. The government, however, seizing upon the single fact that the petitioners are seamen, argues that their remedy is no longer before the Court of Claims but rather under the Suits in Admiralty Act. By so doing, the government seeks to gain the advantage of the two year statute of limitations under the Suits in Admiralty Act, 46 U. S. C. § 745, rather than the six year statute available in cases before the Court of Claims, 28 U. S. C. § 2401(a). In this manner the Suits in Admiralty Act is being invoked to *limit* a remedy available against the United States.

We submit that this argument warps both the language and the philosophy of the Suits in Admiralty and Public Vessels acts. Nowhere in the legislative history of either of these two statutes is there the slightest suggestion that they were intended to *limit* remedies already available against the United States. In fact such an interpretation would completely defeat their legislative purpose of creating additional remedies against the United States so that the government's liability for claims arising out of its maritime operations would be on a par with that of private operators. The circumstances under which these statutes were enacted demonstrates that they were intended to supplement the various remedies already available against the government. It is clear that they were not intended to repeal existing rights. It follows that both the Suits in Admiralty Act and Public Vessels Act create alternative, and not exclusive, remedies against the government and cannot be invoked to limit rights granted under other statutes. Accordingly, the government's position that seamen are now restricted to a remedy under the Suits in Admiralty Act or Public Vessels Act should be rejected.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the decisions below should be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
General Counsel, National Maritime
Union of America, AFL-CIO,
36 Seventh Avenue,
New York, N. Y. 10011.

IN THE

Supreme Court of the United States

October Term, 1965

No. 282

HARRY J. AMELL, ET AL.,

Petitioners,

VS.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

LEE PRESSMAN,
DAVID SCRIBNER,
Counsel for Petitioners,
50 Broadway,
New York, New York 10004.

DAVID SCRIBNER,
JOAN STERN KIOK,
of Counsel.

INDEX

Citations

CASES:

IN THE

Supreme Court of the United States

October Term, 1965

No. 282

HARRY J. AMELL, *et al.*,

Petitioners,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Opinions Below

There are no opinions. The orders of the Court of Claims (R. 6, 13, 24, 31) are unreported.

Jurisdiction

The orders of the Court of Claims were entered on April 12, 1965 (R. 6, 13, 24, 31). The petition for certiorari was filed June 22, 1965, and certiorari was granted October 11, 1965. The jurisdiction of this Court rests on 28 U. S. C. § 1255(1).

Statutes Involved

The statutory provisions involved are 28 U. S. C. §§ 1346(a)(2), 1491, 2401(a), 2501; the Suits in Admiralty Act, as amended, 41 Stat. 525 (1920), 46 U. S. C. §§ 741, 742, 745; the Public Vessels Act, 43 Stat. 1112 (1925), 46 U. S. C. §§ 781, 782; the Classification Act of 1949, as amended, 63 Stat. 954, § 202(7), (8), 5 U. S. C. § 1082(7),

(8); the Federal Employees Pay Act of 1945, 59 Stat. 296, §§ 102, 205, 5 U. S. C. §§ 902(c), 913; and 48 Stat. 522 (1934) as amended, 5 U. S. C. § 673c. These provisions are set forth in the appendix to this brief.

Question Presented

Whether the United States Court of Claims has jurisdiction of actions for wages brought by employees of the United States who are employed on Government vessels?

Statement of the Case

Petitioners are 67 civil service employees of the Department of the Navy, Military Sea Transportation Service, Atlantic Area ("MSTS"),[1] 22 civil service employees of the Department of the Navy, Naval Ordinance Laboratory Test Facility at Fort Lauderdale, Florida,[2] and five civil service employees of the Department of the Army, Corps of Engineers[3] (R. 2, 7, 14, 25). The claims of the MSTS employees are for certain wage increases which they allege they are entitled to by virtue of § 1082(8) of the Classification Act of 1949, 5 U. S. C. 1082(8) (R. 2-3). The other petitioners ask for overtime payments for work done in excess of 8 hours per day. Their claims are based on the Federal Employees Pay Act of 1945, the Classification Act of 1949, and 5 U. S. C. 673(c). All four cases are also based on rules and regulations of the respective executive departments involved (R. 3, 8-10, 15-17, 26-28). The claims are for varying periods up to six years before the date the actions were commenced.

---

[1] Designated as *Amell* v. *United States* in the court below.

[2] Designated as *Allwein* v. *United States* and *Bennett* v. *United States* in the court below.

[3] Designated as *Detling* v. *United States* in the court below.

Jurisdiction of the Court of Claims was based on 28 U. S. C. § 1491, which provides that the Court of Claims shall have jurisdiction of claims against the United States founded upon "any Act of Congress, or any regulation of of an executive department."

Those petitioners who are employed by MSTS and the Corps of Engineers are licensed marine engineers and the petitioners employed by the Naval Ordinance Laboratory are boat group employees. All of the petitioners are employed on vessels operated by the respective agencies of the United States (R. 2, 7, 14, 25).

In each of the cases, the respondent moved to dismiss the action or, in the alternative, to transfer to the appropriate United States District Court, on the ground that the Court of Claims does not have jurisdiction of these actions because "plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts" under the Suits in Admiralty and Public Vessels Act (R. 4-5, 11-12, 23, 29-30).[4]

The Court of Claims granted respondent's motions in all four cases and ordered that the *Amell* case (MSTS employees) be transferred to the United States District Court for the Southern District of New York, the *Allwein* and *Bennett* cases (Naval Ordinance Laboratory employees) to the United States District Court for the Southern District of Florida and the *Detling* case Army Corps of Engineers employees) to the "appropriate United States District Court as shall be designated by the plaintiffs."

[4] In the *Bennett* case (involving Naval Ordinance Laboratory employees), the respondent originally answered on the merits and more than three months later moved to transfer or dismiss (R. 19-23).

(8); the Federal Employees Pay Act of 1945, 59 Stat. 296, §§ 102, 205, 5 U. S. C. §§ 902(c), 913; and 48 Stat. 522 (1934) as amended, 5 U. S. C. § 673c. These provisions are set forth in the appendix to this brief.

Question Presented

Whether the United States Court of Claims has jurisdiction of actions for wages brought by employees of the United States who are employed on Government vessels?

Statement of the Case

Petitioners are 67 civil service employees of the Department of the Navy, Military Sea Transportation Service, Atlantic Area ("MSTS"),[1] 22 civil service employees of the Department of the Navy, Naval Ordinance Laboratory Test Facility at Fort Lauderdale, Florida,[2] and five civil service employees of the Department of the Army, Corps of Engineers[3] (R. 2, 7, 14, 25). The claims of the MSTS employees are for certain wage increases which they allege they are entitled to by virtue of § 1082(8) of the Classification Act of 1949, 5 U. S. C. 1082(8) (R. 2-3). The other petitioners ask for overtime payments for work done in excess of 8 hours per day. Their claims are based on the Federal Employees Pay Act of 1945, the Classification Act of 1949, and 5 U. S. C. 673(c). All four cases are also based on rules and regulations of the respective executive departments involved (R. 3, 8-10, 15-17, 26-28). The claims are for varying periods up to six years before the date the actions were commenced.

---

[1] Designated as *Amell* v. *United States* in the court below.

[2] Designated as *Allwein* v. *United States* and *Bennett* v. *United States* in the court below.

[3] Designated as *Detling* v. *United States* in the court below.

Jurisdiction of the Court of Claims was based on 28 U. S. C. § 1491, which provides that the Court of Claims shall have jurisdiction of claims against the United States founded upon "any Act of Congress, or any regulation of of an executive department."

Those petitioners who are employed by MSTS and the Corps of Engineers are licensed marine engineers and the petitioners employed by the Naval Ordinance Laboratory are boat group employees. All of the petitioners are employed on vessels operated by the respective agencies of the United States (R. 2, 7, 14, 25).

In each of the cases, the respondent moved to dismiss the action or, in the alternative, to transfer to the appropriate United States District Court, on the ground that the Court of Claims does not have jurisdiction of these actions because "plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts" under the Suits in Admiralty and Public Vessels Act (R. 4-5, 11-12, 23, 29-30).[4]

The Court of Claims granted respondent's motions in all four cases and ordered that the *Amell* case (MSTS employees) be transferred to the United States District Court for the Southern District of New York, the *Allwein* and *Bennett* cases (Naval Ordinance Laboratory employees) to the United States District Court for the Southern District of Florida and the *Detling* case Army Corps of Engineers employees) to the "appropriate United States District Court as shall be designated by the plaintiffs."

[4] In the *Bennett* case (involving Naval Ordinance Laboratory employees), the respondent originally answered on the merits and more than three months later moved to transfer or dismiss (R. 19-23).

Although the Court of Claims did not render an opinion in any of these cases, the orders referred to three prior rulings of that court involving United States employees who were also employed on vessels, as the basis for transfer (R. 6, 13, 24-25, 31).

Since no reasons for the transfer were stated in these previous cases, nor in the instant cases, it may be assumed that the Court of Claims agreed with the contention of the United States that wage claims of Government vessel employees are cognizable only in admiralty.

The transfers would have the effect of limiting the petitioners' claims to the two year period applicable under the Suits in Admiralty and Public Vessels Acts. 46 U. S. C. §§ 745, 782. The period of limitations applicable in the Court of Claims is six years. 28 U. S. C. § 2501. Almost all of the individual claims included in the cases involved in this petition cover periods of four to six years prior to the commencement of the respective actions.

Summary of Argument

Petitioners, all civilian employees of the United States employed on Government vessels, properly brought their actions for wages against the United States in the United Court of Claims. These actions are based on Acts of Congress and executive department regulations and come squarely within the provisions of the Tucker Act, which invests the Court of Claims with jurisdiction in such cases. The fact that these Government employees are seamen is not relevant to a determination as to whether the Court of Claims has jurisdiction since there is no provision in the Tucker Act which specifically or impliedly excludes claims of such employees from Court of Claims jurisdiction. In *Bruner v. United States*, 343 U. S. 112 (1952), this Court recognized the then exclusive jurisdiction of the Court of Claims "to

hear and determine claims for compensation brought by employees of the United States". Except for the Congressional granting of concurrent jurisdiction to the district courts with the Court of Claims in actions for compensation by United States employees where the amount of damages claimed does not exceed $10,000, there has been no relevant change in the Tucker Act under which these actions were brought. Until recently the Court of Claims itself has acknowledged and exercised its jurisdiction in suits involving wage claims of Government employees on United States vessels.

Neither the Suits in Admiralty Act of 1920 nor the Public Vessels Act of 1925 divest the Court of Claims of jurisdiction in actions such as those brought by petitioners. The Suits in Admiralty Act is wholly inapplicable to such actions since, under the jurisdictional test of that Act, the actions could not have been brought in admiralty against a private person. Nor are any general principles of maritime or admiralty law involved in petitioners' actions. Their claims for wages as Government employees must necessarily be decided on federal law and regulations pertaining to their compensation as Government employees rather than on admiralty or maritime law. The Public Vessels Act is inapplicable since it applies to tort damages caused by the negligent operation of a public vessel of the United States.

In *Johansen* v. *United States*, 343 U. S. 427 (1952) and *Patterson* v. *United States*, 359 U. S. 495 (1959), this Court held that Government vessel employees must be considered in the category of Government employees rather than in the category of seamen and must therefore be governed by specific legislation, in those cases the Federal Employees Compensation Act, which provides a comprehensive plan for all Government employees. The Court concluded that suits by such employees for personal injuries were not available under the Suits in Admiralty and Public Vessels

Acts and that Government vessel employees were confined to remedies provided by the specific federal laws pertaining to Government employees. The principles stated in *Johansen* and *Patterson* are applicable to petitioners who are Government employees suing the United States for wages due them under specific federal laws and regulations. Their remedies are wholly governed by federal laws affecting all Government employees. *Patterson* noted that "Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States". 359 U. S. at 497, n. 2.

Were petitioners' claims for wages relegated to admiralty jurisdiction under the Suits in Admiralty or Public Vessels Act, they would be limited to a two year statute of limitations as against a six year statute of limitations under the Tucker Act. Such diminution of their rights and remedies cannot be attributed to Congress except by the specific act of Congress. Neither the jurisdictional provisions of the Suits in Admiralty and Public Vessels Acts on their face nor the legislative history of those acts show any such intention of Congress, express or implied.

Petitioners have a clear right to sue in the Court of Claims under the Tucker Act. There is no basis for the district courts to assert jurisdiction under the Suits in Admiralty or Public Vessels Acts.

ARGUMENT

I

The Court of Claims has exclusive jurisdiction of actions by United States employees for wages where the amount of the claim exceeds $10,000. Where the amount of the claim does not exceed $10,000 the Court of Claims has concurrent jurisdiction with the district courts under the Tucker Act.

The pertinent provisions of the Tucker Act[5] are 28 U. S. C. §§ 1346 and 1491. Section 1346 provides in part:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * *
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Section 1491 provides:

> "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

It is clear from a plain reading of the above sections that the cases involved in this petition fall squarely within those provisions of the Tucker Act. All four cases are

---

[5] Act of March 3, 1887, c. 359, 24 Stat. 505, as amended; codified in 28 U. S. C. §§ 1346, 1402, 1491, 1501.

based on acts of Congress [6] and on regulations of executive departments.[7] Three of the actions commenced in the Court of Claims (*Amell, Allwein* and *Bennett*) seek damages exceeding $10,000 and, pursuant to 28 U. S. C. §§ 1346 and 1491, could only have been brought in the Court of Claims. The fourth action (*Detling*) seeks damages for less than $10,000 and could have been brought either in the Court of Claims or in the district court, at the petitioners' option.

In *Bruner* v. *United States,* 343 U. S. 112 (1952), this Court had occasion to discuss the effect of a 1951 amendment to the Tucker Act, which withdrew from the jurisdiction of the district courts' actions for compensation by *employees* of the United States. Previous to the 1951 amendment, 28 U. S. C. § 1346(d) had provided that the district courts did not have jurisdiction under the Tucker Act of a "civil action to recover fees, salary, or compensation for official services of *officers* of the United States". (Emphasis added). In deciding that the effect of the 1951 amendment was to withdraw jurisdiction of the district courts over suits by "employees" without reserving jurisdiction over pending cases, this Court stated:

> "Absent such a reservation, *only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States* even though the district court had jurisdiction over such claims when petitioners action was brought." (Emphasis added) 343 U. S. at 115.

---

[6] The Classification Act of 1949, as amended, 63 Stat. 954, § 202(7), (8), 5 U. S. C. Section 1082(7), (8); the Federal Employees Pay Act of 1945, 59 Stat. 296, §§ 102, 205, 5 U. S. C. § 902(c), 913; 48 Stat. 555 (1934), as amended 5 U. S. C. § 673c (R. 2, 8-10, 15-17, 26-28).

[7] Civilian Marine Personnel Instruction 531.1-2, Navy Civilian Personnel Instructions 610.2-1k; Army Corps of Engineers Regulations, Corps of Engineers Manual, EM 690-7-102, Change 1, Paragraph 7, Sub-paragraph (4). (R. 3, 9, 16, 27).

No action of the Court since *Bruner* appears to have qualified its statement that only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States.[8]

Until recently, the Court of Claims took jurisdiction in actions involving wage claims of civil service employees employed on Government vessels.[9] It is only since 1961 that the Court of Claims, on the Government's motion, has transferred to the district courts cases involving wage claims by Government vessel employees. Nevertheless the Court of Claims continues to exercise jurisdiction over other types of monetary claims involving United States vessel employees. See *e. g. Middleton* v. *United States,* Court of Claims No. 436-61 (1965), in which the court took jurisdiction of a suit by a chief boatswain's mate for wrongful discharge and back pay.

Under 28 U. S. C. §§ 1346 and 1491 the Court of Claims has jurisdiction of claims for compensation founded on any Act of Congress or regulation of an executive department. No exception is made for any particular class of employees. It is not disputed that petitioners are employees of the United States. The fact that they happen to work on ves-

---

[8] A 1964 amendment to 28 U. S. C. § 1346 restored concurrent jurisdiction in the district courts with the Court of Claims in actions for compensation by United States employees where the amount of damages claimed does not exceed $10,000. Pub. L. 88-519, 78 Stat. 699. See Legislative History, U. S. Congressional and Administrative News, 1964, p. 3254.

[9] See, *e.g., Abbott* v. *United States,* 144 Ct. Cl. 712, 169 F. Supp. 523 (1959), a suit for overtime pay by ship pilots employed by the Panama Canal, a United States Government agency; *Adams* v. *United States,* 141 Ct. Cl. 133 (1958), a wage suit by ship pilots and tug masters employed by the Navy; *Hearne* v. *United States,* 108 Ct. Cl. 762, 68 F. Supp. 786, cert. den. 331 U. S. 858 (1947), a suit for overtime wages by employees on floating equipment in the Panama Canal; *United States* v. *Townsley,* 323 U. S. 557 (1945), affg. 101 Ct. Cl. 237, a suit for overtime wages by a Government employed master of a dredge.

sels is immaterial. Since the claims are founded on Acts of Congress and agency regulations, nothing else is required for the invocation of the Court of Claims' jurisdiction.

II

The Suits in Admiralty and Public Vessels Acts do not divest the Court of Claims of jurisdiction under the Tucker Act in actions by United States employees for wages.

The United States would have petitioners' claims relegated to the admiralty side of the district courts and the concommitant two year statute of limitations applicable under the Suits in Admiralty Act [10] and Public Vessels Act [11] rather than to the Court of Claims under the Tucker Act with its six year statute of limitations. The gravamen of the Government's position is that since petitioners are employed on vessels of the United States their claims for wages are maritime claims which must be brought pursuant to the Suits in Admiralty and Public Vessels Acts. In other words, the Government would have petitioners' status as "seamen" override their status as "Government employees".

The jurisdictional provision of the Suits in Admiralty Act is contained in 46 U. S. C. § 742 which provides in relevant part:

> "In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or based, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate non-jury proceeding *in personam* may be brought against the United States. . . ."

---

[10] 41 Stat. 525 (1920), 46 U. S. C. §§ 741-752.

[11] 43 Stat. 1112 (1925), 46 U. S. C. §§ 781-790.

On its face this provision is inapplicable to situations in which Government employees are the plaintiffs, since there does not appear to be any situation in which a Government employee—who by definition is employed and paid by the United States Government—could have a wage claim as a Government employee against a private owner or a private vessel.

Moreover, as discussed more fully in Point I, *supra* in the cases at bar the Government employees' claims for wages are based on federal statutes and agency regulations applicable only to Government employees, and not on general principles of maritime or admiralty law. The wage actions of petitioners could not in the first instance have been brought against a private vessel owner as required by 46 U. S. C. § 742.

The legislative history of the Suits in Admiralty Act supports petitioners' position that Section 742 of that Act is inapplicable here. Prior to the enactment of the Suits in Admiralty Act in 1920, the United States, by virtue of the Shipping Act of 1916,[12] had permitted the seizure of government merchant vessels in proceedings *in rem* in admiralty. Since such proceedings proved to be unworkable, Congress soon remedied the situation by enacting the Suits in Admiralty Act, which provided for a libel *in personam* against the United States in cases where if the "vessel were privately owned or operated . . . a proceeding in admiralty could be maintained. . . ."[13]

---

[12] 39 Stat. 728, 46 U. S. C. §§ 801-810.

[13] Congress was concerned with "taking away the right of libel of certain government-owned vessels". 59 Cong. Rec. 3031 (1920). For a summary of the legislative history of the Suits in Admiralty and the Public Vessels Acts, see *Johansen* v. *United States*, 343 U. S. 427 (1952); *American Stevedores Inc.* v. *Porello*, 330 U. S. 446 (1947); *U. S. Fleet Corporation* v. *Rosenberg*, 276 U. S. 202 (1928).

The 1960 Amendments to the Suits in Admiralty Act eliminated the proviso that the vessel involved must be a merchant vessel and also added the words "or if a private person or property were involved" to the text in Section 2 of the Act, 46 U. S. C. 742. The purpose of these amendments was to clarify the language of the Suits in Admiralty Act and restate "the now existing exclusive jurisdiction conferred on the district courts . . . over cases against the United States which could be sued on in admiralty if private vessels, persons or property were involved." Senate Report 1894, accompanying bill. Legislative History, U. S. Code and Congressional Service, 1960, pages 3583-3587. It is apparent from the legislative history that the insertion of the words "or if a private person or property were involved" has reference to the character or nature of the defendant or respondent and not to the plaintiff or libellant.

The jurisdictional provision of the Public Vessels Act, adopted in 1925, is contained in 46 U. S. C. § 781 and provides in pertinent part:

> "A libel in personam in admiralty may be brought against the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . ."

This Court has held that the Public Vessels Act covers action for damages "caused by the negligent maintenance or operation of a public vessel of the United States." *Johansen* v. *United States*, 343 U. S. 427 (1952); *American Stevedores Inc.* v. *Porello*, 330 U. S. 446 (1947). This is in accord with the legislative history of that Act.[14]

---

[14] The Congressional debate shows a concern to provide a remedy for property and personal injury damage occasioned by the operation of public vessels of the United States. Such claims had previously been brought to a Committee on Claims of the Congress. 66 Cong. Rec. 2087-2089 (1925).

Since the petitioners' claims are all for wages based on federal statutes as well as agency rules and regulations and are not for tort damages, neither the Suits in Admiralty nor the Public Vessels Act is applicable.

Thus the jurisdiction of the Court of Claims under the Tucker Act of petitioners wage claims remains unaffected by either the Suits in Admiralty or the Public Vessels Acts.

III

The *Johansen* and *Patterson* decisions of this Court require affirmation of Court of Claims jurisdiction in suits for wages by Government vessel employees since the laws under which they seek relief are a part of a comprehensive plan for all Government employees.

In *Johansen* v. *United States*, 343 U. S. 427 (1952) and *Patterson* v. *United States*, 359 U. S. 495 (1959), this Court held that civil service employees employed on United States vessels could not sue for personal injuries under the Public Vessels and Suits in Admiralty Acts, but rather were confined to their remedies under the Federal Employees Compensation Act of 1916.[15]

In *Johansen*, a suit by a Government employee for personal injuries brought under the Public Vessels Act, this Court found that the Federal Employees Compensation Act was part of a comprehensive plan for Government employees and that any exception to it would have to be clearly specified by Congress.[16] Since Government vessel

---

[15] 39 Stat. 742, as amended, 5 U. S. C. §§ 751-803.

[16] It might be noted that some federal statutes relating to benefits of Government employees specifically provide that the district courts and the Court of Claims shall have original concurrent jurisdiction of any civil action or claim against the United States founded upon the particular statute involved. See e.g. Federal Employees Group Life Insurance Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103 and Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014. These acts apply to petitioners as civil service employees.

employees already had a remedy with all other Government employees in the Compensation Act which "created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect". 343 U. S. at 441. The Court found nothing in the Public Vessels Act or in the Compensation Act or the legislative history to indicate that Congress intended that civil service employees who are seamen have a different remedy from other civil service employees.

In *Patterson*, an action for damages for personal injuries brought under the Suits in Admiralty Act, the Court reaffirmed the considerations which led to the conclusion in *Johansen*. The Court noted that during World War II, the passage of the Clarification Act of 1943, 57 Stat. 45, 50 U. S. C. App. § 1291, indicated that "Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States". 359 U. S. at 497, n. 2. The Clarification Act had provided that seamen employed temporarily on United States vessels as employees of the United States through the War Shipping Administration would not, because of the temporary wartime character of their employment, have the normal rights, benefits and privileges of federal employees but would instead have the rights, benefits and privileges of privately employed seamen. The Court said, in *Patterson*:

> "If civilian seamen employed by the Government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them." 359 U. S. at 496.

The reasoning of this Court in *Johansen* and *Patterson* is applicable to the issues here involved. The Tucker Act, which had been enacted in 1887, has provided a comprehensive system for actions by Government employees

against the United States for compensation. It covers all Government employees. The Tucker Act was in effect long before the Suits in Admiralty and Public Vessels Acts were enacted in 1920 and 1925 respectively. The Tucker Act does not make any exception for Government employees who are seamen and the Suits in Admiralty and Public Vessels Acts do not, by their jurisdictional provisions cover Government employees who are seamen.[17]

It is noteworthy that this Court reached its conclusion in *Johansen* despite the fact that it found that "literal application of the words" of the Public Vessels Act would permit suits against the United States for personal injuries by public vessels employees pursuant to that Act. The Court is under no such handicap in the instant case, since as noted above, by their very terms neither the Suits in Admiralty Act nor the Public Vessels Act applies to wage claims by Government employees who are seamen.[18]

---

[17] The Court of Claims had assumed jurisdiction of claims for compensation by vessel employees for many years after the passage of the Suits in Admiralty and Public Vessels Acts. *Supra*, n. 9. If the Congress thought that such actions should be brought pursuant to the Suits in Admiralty and Public Vessels Acts, it had the opportunity to make such provision when it amended the Tucker Act in 1951, 65 Stat. 727, and 1964, 78 Stat. 699, and when it amended the Suits in Admiralty Act in 1960, 74 Stat. 912. Its failure to do so indicates a satisfaction with the comprehensive system that has long prevailed.

[18] *Thomason* v. *United States*, 184 F. 2d 105 (9 Cir. 1950) and *Jentry* v. *United States*, 73 F. Supp. 899 (S. D. Cal. 1947) would appear to support respondent's position. They conflict with the later principles of this Court in *Johansen* and *Patterson*, and are clearly wrong. Cf. *Henderson* v. *United States*, 74 F. Supp. 343 (S. D. N. Y. 1947) in which the district court held that the Court of Claims had exclusive jurisdiction under the Tucker Act of suits for bonuses by civilian personnel employed on vessels of the United States Army Transport Service.

Since no principles of admiralty or maritime law are involved in the instant cases, if any uniformity is required here it is that pertaining to the interpretation of federal statutes which apply to Government employees. The questions involved in these cases are based on interpretations of federal statutes and agency rules and regulations applicable to United States employees.

As Government employees the petitioners are subject to the many special statutes which apply to all Government employees. [19] On the other hand petitioners are not entitled to the many special benefits available to privately employed seamen under the maritime law such as maintenance and cure.[20]

Since Sections 2401 and 2501 of 28 U. S. C. provide for a six year statute of limitations for civil actions brought against the United States and for claims of which the Court of Claims has jurisdiction, the effect of requiring vessel employees of the United States to sue under the Suits in Admiralty and Public Vessels Acts would be to either bar

---

[19] E.g. Annual and Sick Leave Act of 1951, as amended, 65 Stat. 679, 5 U. S. C. §§ 2061-2071; Federal Employees Group Life Insurance Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103; Civil Service Retirement Act, as amended, 70 Stat. 743, 5 U. S. C. §§ 2251-2268; Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014, Federal Employees Compensation Act of 1916, as amended, 39 Stat. 742, 5 U. S. C. §§ 751-803 and other provisions generally contained in 5 U. S. C.

[20] In addition, as United States Government employees they do not have the right to strike and although they may join unions and choose representatives under Exec. Order 10988, 27 Fed. Reg. 551 (1962), they cannot engage in meaningful collective bargaining because their wages and benefits are governed by statute. Moreover, if petitioners were privately employed seamen their wage claims would be the subject of grievance procedure and arbitration. As Government employees their claims must be presented to the General Accounting Office prior to the courts. 31 U. S. C. § 71.

certain claims completely when not brought within the two year limitation applicable to those Acts, or to cause drastic reductions in the amount potentially recoverable.[21]

If Government employees who are seamen must be limited to their remedies for personal injuries under the Federal Employees Compensation Act as are all other Government employees, with the resulting monetary loss, then surely they have the right to be treated as other Government employees for purposes of wage claims with the monetary benefits of a longer statute of limitations. They cannot be treated as Government employees or as seamen depending upon whether the Government seamen stand to lose (and the Government to gain) by such treatment. This could constitute unconscionable discrimination.

In absence of specific legislation by the Congress to the contrary, the petitioners are entitled to sue in the Court of Claims under the Tucker Act as are all other Government employees.

---

[21] Cf. *Continental Casualty Co.* v. *United States,* 156 F. Supp. 942 (Ct. Cl. 1957) and *United Fruit Co.* v. *United States,* 168 F. Supp. 549 (Ct. Cl. 1958). In the *Continental* case, the Court of Claims said:

> "We are convinced that it cannot be assumed that Congress, in the passage of the Public Vessels Act, intended to withdraw from a claimant a remedy he clearly had in the Court of Claims to sue for a breach of a construction contract, even though it related to a vessel that had been laid up for four years, and that it did not intend to reduce the time in which he had to assert that claim from six years to two years. Such a purpose is not discernible from the language of the Act, and to stretch its language to make it fit the defendant's Procrustean bed would deprive this contractor of a remedy enjoyed by all other contractors engaged in the performance of a contract to do any other sort of public work."

Conclusion

Petitioners have a clear right to sue in the Court of Claims under 28 U. S. C. § 1491. There is no basis for the district courts to assert jurisdiction under the Suits in Admiralty or Public Vessels Acts.

The Orders of the Court of Claims transferring these actions to the district courts should be reversed.

December, 1965.

Respectfully submitted,

LEE PRESSMAN,
DAVID SCRIBNER,
Counsel for Petitioners,
50 Broadway,
New York, New York 10004.

DAVID SCRIBNER,
JOAN STERN KIOK,
of Counsel.

APPENDIX

28 U. S. C. § 1346

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * *

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

28 U. S. C. § 1491

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

28 U. S. C. § 2401

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. . . .

* * *

28 U. S. C. § 2501

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, within six years after such claim first accrues. . . .

SUITS IN ADMIRALTY ACT

41 Stat. 525

March 9, 1920

46 U. S. C. §§ 741-752

Sec. 741. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company.

Sec. 742. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. . . .

* * *

Sec. 745. Suits as authorized by this chapter may be brought only within two years after the cause of action arises. . . .

PUBLIC VESSELS ACT

43 Stat. 1112

March 3, 1925

46 U. S. C. §§ 781-790

Sec. 781. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . .

Sec. 782. . . . Such suits shall be subject to and proceed in accordance with the provisions of chapter 20 of this title or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

* * *

CLASSIFICATION ACT OF 1949

63 Stat. 954

5 U. S. C. §§ 1071-1153

Sec. 1082. This chapter (except title XII) shall not apply to—

* * *

(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement. . . . *Provided,* That the compensation of such employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates;

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry; . . .

FEDERAL EMPLOYEES PAY ACT OF 1945

59 Stat. 295

5 U. S. C. §§ 901-958

Sec. 902.

• • •

(c) Sections 84, 663, 667, 672a, 673 of this title, and this chapter, except sections 913 and 947 of this title, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

• • •

Sec. 913. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows . . .

ACT OF JUNE 26, 1936

48 Stat. 522 as Amended

5 U. S. C. § 673c

The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor are established at not more than eight per day or forty per week, but work in excess of such hours shall be permitted when administratively determined to be in the public interest: *Provided further*, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation, except that employees subject to this section who are regularly required to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status shall be paid overtimes rates only for hours of duty, exclusive of eating and sleeping time, in excess of forty per week.